IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.258 OF 2005

Ashok Kumar Rashimalal ..Petitioner.

Vs.

State of Maharashtra

through Divisional Registrar & Ors...Respondents.

....

Mr. S.K. Jegdish for the Petitioner.

Mr. A. Sayeed, AGP for the State.

Ms. R. Peerbhoy for Respondent Nos.2 and 5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

3rd February, 2005.

P.C. :

The recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act was challenged by the Petitioner in revision, but the revision application was rejected on 19th April, 2003 by the Divisional Joint Registrar on the ground that the mandatory requirement of predeposit under Section 154(2)(A) was not complied with. The order of the Divisional Joint Registrar is not challenged. The Petitioner is admittedly a

guarantor. The only contention which has been urged on behalf of the Petitioner is that the principal borrower and his father who had also given the guarantee ought to have been proceeded with before moving against the Petitioner. As a matter of first principle there is no merit in that submission. The liability of the Petitioner is co-extensive with that of the principal borrower. That apart, counsel appearing on behalf of the Judgment Creditor, the Second Respondent, states that the property of the principal borrower was sought to be attached but it has been revealed that there is already a pre-existing mortgage on the aforesaid property. Be that as it may, the liability of the Petitioner being co-extensive with that of the principal borrower, there is no substance in the submission which has been urged in support of the Petition. Even during the course of these proceedings, I had asked the counsel appearing on behalf of the Petitioner as to whether the Petitioner would be in a position to make pre-deposit under Section 154(2)(A) in which case it would have been possible to explore the possibility of restoring the revision application. The counsel has not responded to that suggestion

also. There is no merit in the Petition which is accordingly rejected.